

Coalition for Police Contracts Accountability

**Recommendations for the
City of Chicago & Law Enforcement
Union Contracts**

Introduction

For decades, the Chicago Police department has had a “code of silence” that allows officers to hide misconduct. The Fraternal Order of Police (FOP) Lodge 7 and the Illinois Policemen’s Benevolent and Protective Association (PBPA) union contracts with the City of Chicago effectively make this “code of silence” official policy. The contracts make it too hard to identify police misconduct and too easy for police officers to lie about and hide misconduct. The contracts require those charged with investigating misconduct to ignore and destroy evidence of misconduct. They also make it too hard to investigate and be transparent about police misconduct.

Chicagoans are affected by the misconduct, collusion, and cover-ups enabled by this code of silence. People have seen the graphic footage of police shootings as well as the misleading public statements released after these shootings. Hundreds of millions of taxpayers’ dollars have been used for settlements for misconduct cases against the Chicago Police Department.¹

Mayor Rahm Emanuel has acknowledged that the code of silence is a barrier to reform of the police department.² The contracts for sergeants, lieutenants and captains – all represented by the PBPA – have all expired, and the FOP contract will expire in 2017. The City must take this opportunity to reform the police contracts and end provisions that effectively make the code of silence an official policy. Mayor Rahm Emanuel must negotiate, and the Chicago City Council approve, law enforcement union contracts that improve police accountability.

As a coalition of concerned community and policy stakeholders, we call on the mayor and city council to ensure that contract provisions enabling the code of silence will be brought to an end by adopting the recommendations we have put forward in this document.

I. The contracts make it too hard to identify police misconduct.

The Current FOP and PBPA contracts make it too hard to identify police misconduct.

The contracts require an affidavit to investigate a complaint.³ The police contracts require people who wish to make a complaint about a police officer to sign an affidavit. An affidavit is a legal document. In it, you state the facts about the complaint, swear the facts are true, and sign in front of a notary. While some see the affidavit requirement as a way to weed out false complaints, many people do not trust the discipline system, or the criminal justice system and do not want to sign an affidavit that could lead to a potential charge of perjury.⁴

This barrier leads to many complaints that are closed or never investigated. A full 58% of the 17,700 complaints filed over a four-year period were not fully investigated because they were tagged as having “no affidavit.”⁵ The police department and City lost valuable information about the conduct of police officers because they could not consider the information in those complaints. The United States Department of Justice (“DOJ”) also raised concerns about this requirement in its investigation of the Chicago Police Department and recommended that this requirement be changed.⁶

The contracts limit the investigation of anonymous complaints.⁷ The police contracts do not allow anonymous complaints to be investigated. Many people fear retaliation from police officers and do not want to give their name when they make a complaint.

Departments routinely investigate anonymous complaints of civilians breaking the law, so they should do the same for complaints involving officers. If an investigation uncovers sufficient evidence of misconduct, the fact that the investigation was triggered by an anonymous complaint should not make a difference. Other departments are required to investigate anonymous complaints under consent decrees with the DOJ, including police departments in New Orleans, Los Angeles, and Cincinnati, and the New Jersey State Police.⁸ Indeed, the DOJ stated in its recent investigation of the Chicago Police Department that the prohibition against investigating anonymous complaints should be modified, as it “impedes the ability to investigate and identify legitimate instances of misconduct.”⁹

The contracts require that the name of anyone who brings a complaint be disclosed.¹⁰ The police contracts require investigators to give the complainant’s name to the officer before the officer is questioned. Many people do not want to make a complaint if the officer will learn their name while the investigation is pending, out of fear that the officer may intimidate or retaliate against them.¹¹ In its recent investigation of the Chicago Police Department, the DOJ suggested this requirement be eliminated because of its potential chilling effect on misconduct reporting.¹²

The contracts ban rewards for police officers who provide information about misconduct.¹³ The contracts prevent the department from offering rewards, including transfers, to officers who provide information about misconduct. Officers have a duty to report misconduct, and both the contract and police department culture should support fulfillment of this duty.¹⁴

Instead, the contract says that the police department cannot reward whistleblowers, and indeed the police department culture actively does not encourage whistleblowing. For example, Jamie Kalven of the Invisible Institute recently reported that two officers, Shannon Spalding and Danny Echeverria, were retaliated against after working undercover with the FBI to expose a corrupt officer, who was eventually convicted of selling drugs. As part of a pattern of retaliation, once they ended their assignment, supervisors instructed their teams of officers not to provide any backup for them. The City settled these officers’ lawsuit for retaliation for \$2 million earlier in May 2016, after the court ruled that Mayor Rahm Emanuel could be called to testify on the code of silence. While, in this case, the officers alleged that the retaliation came from their supervisors, supervisors should have the ability to support and protect whistleblowers. Officers who serve as whistleblowers should be supported, and, potentially promoted or moved to prevent retaliation.¹⁵

Recommendations

We recommend that the new law enforcement union contracts with the City of Chicago eliminate barriers that make it harder to identify potential misconduct. New contract provisions should:

1. Eliminate the requirement of a sworn affidavit for investigating civilian complaints of misconduct.
2. Allow for the filing and investigation of anonymous complaints.

3. Prevent the disclosure of a complainant's name prior to the interrogation of an accused officer.
4. Remove the ban on offering rewards to officers that cooperate or provide information on ongoing investigations.

II. The contracts make it too easy for officers to lie about misconduct.

The police contracts give police officers privileges that make it too easy to lie to investigators.

The contracts allow officers to delay giving a statement after a shooting.¹⁶ Officers involved in a police shooting do not have to testify about the shooting for 24 hours. During that time, there is no requirement that officers be separated. Delays make it easier for officers to lie and coordinate their stories.¹⁷ For example, in the case of the shooting of Laquan McDonald, several officers gave remarkably similar statements that were all proven false by the video evidence.¹⁸ Citing the McDonald case and the risk of collusion, the DOJ recommended that this provision be renegotiated.¹⁹ Several DOJ consent decrees mandate that officers be separated following an incident of force.²⁰

The FOP contract allows officers to change their official statements about potential misconduct.²¹ If there is a video or audio recording of an incident and officers are not provided with the tape before their interview, then officers are allowed to change their statements with no consequences. In some cases, this makes it impossible to discipline an officer for making a false statement.²² The DOJ acknowledged how rarely officers were investigated for making false statements and identified the FOP contract as an additional obstacle to enforcement in this area.²³

Recommendations

We recommend that the new law enforcement union contracts with the City of Chicago get rid of provisions that make it too easy for officers to lie about misconduct. New contract provisions should:

5. Eliminate the 24 hour delay on officer statements in shooting cases and create a clearly outlined process to receive statements from all officers involved in a timely manner.
6. Eliminate officer's right to review and amend statements previously made to investigators.

III. The contracts require officials to ignore and destroy evidence of misconduct.

The police department and IPRA/COPA could have access to lots of information about an officer's history, and about potential red flags that could be used to identify misconduct, but the contracts require that valuable information be ignored or destroyed.

The contracts limit the use of past disciplinary records in investigating and resolving current complaints.²⁴ In cases that don't involve excessive force or criminal conduct, if IPRA/COPA cannot prove or disprove a complaint against an officer, the information in that complaint can't be used in a future investigation. Additionally, if an officer has a sustained

complaint, but little or no discipline, that information is also removed from the officer's file. These restrictions prevent investigators from looking at patterns of alleged misconduct other than excessive force and criminal conduct. Other patterns, like patterns of false arrest, illegal searches, or racial or sexual abuse are useful to an investigation to show credibility, establish intent, or help determine the penalty the officer should receive. Other departments have access to and consider past complaints.²⁵ Investigators should be able to use any relevant evidence and findings to identify potential patterns of misbehavior. Moreover, the DOJ recognized that the FOP contract undermines the effectiveness of the Chicago Police Department's accountability processes by preventing the Police Board from fully accessing an officer's complaint and disciplinary file and preventing the department's intervention systems from considering the full range of relevant behavior.²⁶

The contracts require destruction of disciplinary records after five years.²⁷ A recent ruling by an Illinois appellate court upheld public access to police misconduct complaint records for the Chicago Police Department, but a provision mandating their destruction is still in the contract. Complaint records can be critical to establishing the existence of a pattern of allegations from civilians of particular misconduct, which can be relevant to resolving credibility disputes between officers and civilians.²⁸ Furthermore, disciplinary records should be retained for the purpose of a proactive early intervention system, which can assist in identifying officers with ongoing problems.²⁹ Indeed, the DOJ found that the provision requiring the destruction of disciplinary records "deprives CPD of important discipline and personnel documentation that will assist in monitoring historical patterns of misconduct."³⁰

The Cincinnati, Los Angeles, and Pittsburgh police departments each maintain records during the officer's employment, plus an additional five years for Cincinnati, and an additional three years for Los Angeles and Pittsburgh (after which time Pittsburgh archives the information indefinitely).³¹

The contracts limit the investigation of older complaints.³² The police department is prohibited from investigating complaints known to the Chicago Police Department that are over five years old without permission of the Superintendent. It makes sense to require good proof before disciplining an officer, and it may be harder to use old evidence to prove something that happened a long time ago.³³ But it doesn't make sense to require investigators to ignore evidence just because it is older. The DOJ additionally found this provision problematic because the culture within the Chicago Police Department and the code of silence may prevent the disclosure of misconduct in a timely fashion.³⁴

Recommendations

To improve the quality and effectiveness of investigations into allegations of police misconduct, the new union contracts should provide easier access to records that could help uncover information about misconduct or patterns of misconduct. New contract provisions should:

7. Allow past disciplinary records to be used in investigating and resolving present complaints.
8. Eliminate the provision requiring the destruction of police misconduct records.
9. Eliminate the need for the Superintendent's authorization to investigate complaints that are five years old or older.

IV. The contracts make it too hard to investigate and be transparent about police misconduct.

The current FOP and PBPA contracts include provisions that make it harder to investigate potential misconduct and make it easier for officers to use some technicality to escape punishment, and they reinforce the lack of transparency in the investigation of police misconduct and therefore fail to protect the public's interest. The Independent Police Review Authority (IPRA) has been criticized for being ineffective at finding and making the case that officers have engaged in misconduct. These contract provisions have contributed to its failure. IPRA has been replaced by the Civilian Office of Police Accountability (COPA). Without changes to the police contracts, COPA will face the same challenges to investigations as IPRA. The contracts:

The contracts place constraints on interrogators questioning officers.³⁵ When officers are questioned about complaints, the questioner must follow many rules. For example, interrogators of police officers must take turns asking questions.³⁶ These restrictions mean that an investigation could be thrown out for a technical violation of a rule that has little benefit.³⁷ The Task Force Report concluded that this “policy does not appear to comport with any best practices and should be eliminated.”³⁸

The contracts require that officers be given detailed information before they are interrogated.³⁹ Officers must be informed of the nature of allegations made against them before they can be interrogated. This provision is written broadly enough that it is interpreted to be a very detailed and specific presentation of the facts of the case and all the possible charges they could be facing.⁴⁰ Arbitrators have found that if an investigator finds that an officer lies during an investigation, that lie must be presented as a new charge with all facts presented.⁴¹ These technical requirements make it more difficult to investigate and prove misconduct.

The contracts limit disclosure of the identities of officers who are the subject of a civilian complaint.⁴² There are provisions that limit disclosure of an accused officer's identity in many cases. Information about closed investigations has been released through FOIA, providing valuable information to the public about IPRA's effectiveness. These provisions should be revised to ensure continued disclosure.

The disclosure of the identities of officers who are the subjects of any civilian complaint is essential to making IPRA (COPA) as effective, transparent, and accountable to the community as possible.

The contracts deny access to information about officers that could help identify misconduct.⁴³ The contracts say that officers are not required to disclose information about other jobs they may have. Disclosure of this information could help identify potential indicators of corruption, such as unexplained income, or potential conflicts of interest and emotional stressors that may adversely impact performance and that otherwise would not come to light.⁴⁴ Other people who work for the City of Chicago are required to disclose their secondary employment.

Recommendations

We recommend that the new law enforcement union contacts with the City of Chicago increase transparency and public trust. New contract provisions should:

10. Remove constraints on how interrogators can ask questions.
11. Specify that information provided to officers prior to interrogations should be a general recitation of allegations.
12. Allow for the disclosure of the identities of officers who are the subject of civilian complaints.
13. Require officers to disclose secondary employment and any other pertinent information that may cause a conflict of interest in performing their duties as a sworn officer.

V. Repeat abusers cost the taxpayers money and should pay.

There is an incredible burden placed on the residents of the City of Chicago to cover the financial costs of cases where the City either settles or is found liable for the misconduct of officers. Chicago police settlements cost taxpayers \$210 million plus interest between 2012 and 2015 alone.⁴⁵ The City covers the cost of these cases—officers themselves do not pay.

Recommendations

We believe there should be provisions in this contract that strengthen the consequences officers face for misconduct and place some of the burden on officers who have been found guilty of misconduct. New contract provisions should:

14. Reduce years of seniority for officers who have been repeatedly recommended for suspension because of findings of complaints filed against them.

Conclusion

The current police contracts with the City of Chicago harm accountability. The contracts make it hard to complain about police misconduct, easy for officers to lie, and hard to investigate claims of misconduct.

These contracts must be reformed. We call on the Mayor's office to negotiate a contract with our recommended fourteen changes, and on aldermen to refuse a contract without these changes.

¹ Police Accountability Task Force, *Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities they Serve* 98 (Apr. 2016) (hereafter “Task Force Report”).

² Remarks of Mayor Rahm Emanuel, Justice, Culture and Community (Dec. 9, 2015), *available at* <http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/December/12.9.15MREremarks.pdf>.

³ FOP Contract App. L; Sergeants, Lieutenants, and Captains Contracts § 6.10.

⁴ Task Force Report, at 70-71.

⁵ *Id.*; Jeremy Gornier and Geoffrey Hing, “Cops who pile up complaints routinely escape discipline,” *Chicago Tribune* (June 13, 2015), *available at* <http://www.chicagotribune.com/news/ct-chicago-police-citizen-complaints-met-20150613-story.html>.

⁶ United States Department of Justice Civil Rights Division, *Investigation of the Chicago Police Department* 50 (Jan. 2017) (hereinafter “DOJ Investigation”).

⁷ FOP Contract § 6.1(D); Sergeants, Lieutenants, and Captains Contracts § 6.1(E).

⁸ Task Force Report, at 71 (citing Samuel Walker, *The New World of Police Accountability*, at 78 (2005)); New Orleans Police Department (“NOPD”) Consent Decree ¶ 390; Los Angeles Police Department (“LAPD”) Consent Decree ¶¶ 74(b), 86; Cincinnati Police Department Consent Decree ¶¶ 37-56; New Jersey State Police (“NJSP”) Consent Decree ¶ 61.

⁹ DOJ Investigation, at 51-52.

¹⁰ FOP Contract § 6.1(E); Sergeants, Lieutenants, and Captains Contracts § 6.1(G).

¹¹ Task Force Report, at 71.

¹² DOJ Investigation, at 52.

¹³ FOP Contract § 6.1(G); Sergeants, Lieutenants, and Captains Contracts § 6.1(I).

¹⁴ Task Force Report, at 73; CPD, General Order G08-01-02, Specific Responsibilities Regarding Allegations of Misconduct, Sec. II(B)(1). The DOJ noted that “CPD does not properly incentivize or reward” supervisors who hold officers accountable for violations DOJ Investigation, at 106-07. Furthermore, the DOJ found that officers often choose to lie and risk their careers, even when telling the truth would not subject them to any discipline. *Id.* at 75.

¹⁵ Jamie Kalven, “Code of Silence,” *The Intercept*, (Oct. 6, 2016), *available at* <https://theintercept.com/series/code-of-silence/>.

¹⁶ CPD, General Order G08-01-01, Department Member’s Bill of Rights, Sec. III B-E (Mar. 17, 2013). *See also* Task Force Report, at 93, n. 225, citing working group interview stating that the provision resulted from an arbitrator’s ruling.

¹⁷ Task Force Report, at 71 (citing multiple working group interviews).

¹⁸ *Id.* at 71.

¹⁹ DOJ Investigation, at 57-59.

²⁰ NOPD Consent Decree ¶ 86(f); LAPD Consent Decree ¶ 61; Cleveland Police Department Consent Decree ¶¶ 97(h), 118(h); Albuquerque Police Department Consent Decree ¶ 52(f); Portland Police Department Consent Decree ¶ 125.

²¹ FOP Contract §§ 6.1(M), 6.2(J).

²² Task Force Report, at 72.

²³ DOJ Investigation, at 75.

²⁴ FOP Contract §§ 8.2-8.4; Sergeants, Lieutenants, and Captains Contracts §§ 8.2-8.4.

²⁵ *See* Buffalo Police Department Amended Consent Decree ¶¶ 11(a), 32, 34; LAPD Consent Decree ¶¶ 83-84; NJSP Consent Decree ¶¶ 41(b), 90; Pittsburgh Bureau of Police (“PBP”) Consent Decree ¶¶ 11(b), 12(a), 57, 63, 66.

²⁶ DOJ investigation, at 89, 111-13.

²⁷ FOP, Sergeants, Lieutenants, and Captains Contracts § 8.4.

²⁸ Task Force Report, at 72-73.

²⁹ *Id.*

³⁰ DOJ Investigation, at 52.

³¹ Cincinnati Police Department Consent Decree ¶¶ 58(g), 59, 63; LAPD Consent Decree ¶¶ 41(g)-(h), 49; PBP Consent Decree ¶¶ 12(a), 12(c), 44.

³² FOP, Sergeants, Lieutenants, and Captains Contracts § 6.1(D).

³³ Task Force Report, at 72.

³⁴ DOJ Investigation, at 52.

³⁵ FOP, Sergeants, Lieutenants, and Captains Contracts §§ 6.1, 6.2. The DOJ Investigation addressed other problems involving interrogations of officers, such as hidden witness coaching by union representatives and attorneys and use of leading questions. DOJ Investigation, at 61-64. The combination of these aids to officers and constraints on interrogators serves to further impair efforts to find out the truth.

³⁶ Task Force Report, at 72.

³⁷ *Id.* at 159.

³⁸ *Id.*

³⁹ FOP Contract §§ 6.1(C), (E); Sergeants, Lieutenants, and Captains Contracts §§ 6.1(C), (G). As with the previous provisions, the DOJ Investigation addressed other interrogation issues that compound this problem. DOJ Investigation, at 61-64.

⁴⁰ Task Force Report, at 160.

⁴¹ *Id.* at 72.

⁴² FOP Contract §§ 6.4, 6.9; Sergeants, Lieutenants, and Captains Contracts §§ 6.4, 6.8.

⁴³ FOP Contract § 6.8; Sergeants, Lieutenants, and Captains Contracts § 6.7. The DOJ Investigation noted that a “significant amount of alleged officer misconduct involves officers working secondary employment” and called for a “thorough review of policies and accountability measures” in this regard. DOJ Investigation, at 59, n.20.

⁴⁴ Task Force Report, at 73.

⁴⁵ Mercy Yang, “Chicago Police Settlements Cost Taxpayers \$210 Million Plus Interest”, *Huffington Post*, available at http://www.huffingtonpost.com/entry/chicago-police-settlement-misconduct-210-million_us_5787f6a6e4b03fc3ee500a88.